

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Brian Spencer Pease
60 Camino Alto, Apt 1
Mill Valley, CA 94941

Registered Nurse License No. 560609
Public Health Nurse License No. 61976

Respondent.

Case No. 2008-30

OAH No. N2007080580

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 20, 2007.

IT IS SO ORDERED November 20, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BRIAN SPENCER PEASE,

Registered Nurse License No. 560609
Public Health Nurse License No. 61976

Respondent.

Case No. CR146379A

OAH No. N2007080580

PROPOSED DECISION

On August 31, 2007, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Maretta D. Ward, Deputy Attorney General, represented Complainant Ruth Ann Terry, M.P.H., R.N.

Neither Respondent Brian Spencer Pease nor his representative appeared at the hearing of this matter.

Upon determining that the accusation and notice of hearing had been properly served in accordance with Government Code sections 11505 and 11509, the matter proceeded as a default under Government Code section 11520.

On August 31, 2007, Complainant submitted the matter and the record closed.

FACTUAL FINDINGS

1. On July 31, 2007, through her designee, Complainant Ruth Ann Terry, M.P.H., R.N. (Complainant), in her official capacity as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California, made the Accusation against Respondent Brian Spencer Pease.

License History

2. On October 26, 1999, the Board of Registered Nursing (Board) issued Registered Nurse License Number 560609 to Respondent Brian Spencer Pease (Respondent). The license was in full force and effect at all times pertinent to this matter. On March 29, 2000, the Board issued Public Health Nurse License Number 61976 to Respondent. The license was in full force and effect at all times pertinent to this matter. The license expired on August 31, 2007.

Before the date of expiration of Respondent's licensure on August 31, 2007, the California Superior Court in and for the County of Marin on April 27, 2006, issued an Order Suspending the Practice of Registered Nursing under Penal Code section 23, as a condition of bail and his release during the pendency of the criminal action against him. The Superior Court's order required Respondent to immediately surrender to the Board all indicia of his license to practice as a registered nurse.

Unprofessional Conduct – Record of Criminal Convictions

3. On September 20, 2006, in case number CR146379A, the California Superior Court in and for the County of Marin convicted Respondent, on a plea of guilty, of violating Penal Code sections 311.11, subdivision (a) (Unlawful Possession or Control of Image, Picture, Photograph, etc., of a Person Under the Age of 18 years that Depicts Such Person Engaging In or Simulating Sexual Conduct-namely, Child Pornography), a misdemeanor.

The crime for which Respondent was convicted on September 20, 2006, is an offense that is substantially related to the qualifications, functions, and duties of a registered nurse.

4. Respondent's conviction in September 2006 arose out of discovery by police of illegal child pornographic material during the execution of a search warrant at Respondent's residence in Mill Valley, Marin County, California, on December 7, 2005.

Before the date of the search of his home, Respondent had been a suspect in two criminal investigations by San Francisco police regarding reports that he had been loitering around public bathrooms used by boys who visited the Exploratorium. Police suspected that Respondent had used the digital camera on a cellular telephone to photograph boys as they sat on toilets. Police had initiated an investigation and surveillance of Respondent beginning in mid-November 2004.

During the December 2005 search of Respondent's home, police seized all computer related items, including a CPU unit, a media card, computer CDs, 17 floppy discs, and a cell phone camera. The law enforcement personnel discovered X-rated DVDs with such titles as: "Barely Legal-Tiny Teens," "Youngest First Time," "Young Sluts, Inc.," "Sleep Over Sluts," and "X-Tra Hardcore-Tiny Girls."

The arresting officer wrote:

I then discovered a book 'Immediate Family' . . . in the living room. The front page of the book had two topless girls and one boy [who] appeared to be under 10 years of age. The book displayed numerous picture[s] of children naked or with only underwear on. Some of the picture titles were 'Jessie at 6' displaying a naked girl, 'Winter Squash' displaying another naked girl, numerous pictures of boys in underwear. A photo of 'Roger Plogger at 6:01,' displaying a girl between an adult male's legs [was observed.] Other disturbing nude photos were of 'Virginia at 4, Jessie at 5, Virginia at 3,' a photo titled 'popsicle drips' [displayed] a nude boy with dirt around his genital area. . . ."

I then discovered E [mail] receipts from 'Scatmen.com' for three DVDs' titled 'Steamy Dmps 02,' 'Steamy Dmps 01,' 'Big Dump,' [which listed Respondent's] E-mail and phone number. [Respondent] told [the police officer] that these were fetish video's of men defecating. This investigation was started on 11/19/2004 after [Respondent] took a photo of a boy going to the bathroom. These fetish videos were delivered to [Respondent] on 4/28/2004 and it appears that [Respondent] attempted to create his own personal fetish video by taking a photo or video of the victim-Anthony, . . . [seven] months later.

5. Complainant presented at the hearing of this matter copies of text taken from the hard drive of the computer owned by Respondent or used by him at his place of employment. The stories depict acts by the characters that involve obscenity of the most filthy and disgusting nature in the extremity range of written pornography.

During the course of the criminal prosecution, Respondent's employer, Kaiser Permanente medical offices in Emeryville conducted a forensic analysis of the workplace computer that was assigned to Respondent. The analysis of the computer hard drive disclosed "chat sites," for such domains as www.toiletstool.com, which is an Internet site for posting regarding coprophilia¹ that relates to minors. The computer showed conversations of a sexual nature with individuals who held themselves out as being minors.

6. At the hearing of this matter Complainant offered 138 images of the 143 child pornographic images that law enforcement personnel had extracted from the computer owned

¹ Coprophilia is the word for "marked interest in excrement, especially: use of feces or filth for sexual excitement." *Webster's Third New International Dictionary of the English Language, Unabridged* (1968), p. 503.

or exclusively used by Respondent. The vast majority of the images depicted obscene matter² of the most disgusting and reprehensible nature.

7. As a consequence of the conviction in September 2006, the court conducted a sentencing hearing on December 27, 2006.

The court suspended imposition of sentencing and placed Respondent on supervised probation for a term of three years under certain terms and conditions. The court noted that probation was set to expire on December 27, 2009.

Under the terms and conditions of probation, the court included an order that Respondent register under Penal Code section 290 as a sex offender. The court directed that Respondent not engage in any nursing practice without permission of the probation officer. The court directed Respondent to be confined in county jail for 120 days in the custody of the county sheriff. The court ordered Respondent to pay fines and fees in the amount of \$220. The court commanded Respondent to participate in meetings and programs for the treatment of sex offenders as offered by "Sharper Futures." The court prohibited Respondent from being within 100 yards of the perimeter of any school, day care facility or park where children played. The court ordered Respondent not to communicate with any person under the age of 18 years. The court directed Respondent to surrender to police all pornographic material, and commanded him not to create, view, purchase or possess any videotape, book, or magazine that depicts children or people pretending to be children engaged in sexual acts. The court ordered Respondent to undergo psychological assessment as directed by the probation officer. And the court ordered Respondent to obey all laws.

Matters in Aggravation

8. A reasonable inference may be drawn that an individual who collects, stores or maintains such deplorable images and text, which depict the most grossly vile behavior, is possessed of a disposition and readiness for evil. Respondent's conduct in possession the child pornography that led to his conviction reflects a corrupted disposition.

9. As established by the criminal conviction recorded in Factual Finding 3, Respondent procured, possessed, and stored as well as infused into his psyche pornographic material so repugnant, vile and loathsome as to be dangerous or injurious to himself, another person, or the public.

Any regular or persistent use of, or possession of, child pornography, which is injurious to Respondent in the way of conduct that leads to a conviction for unlawful

² " 'Obscene matter' means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts . . . sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." Penal Code section 311, subdivision (a).

possession of child pornography evidences a character that more likely than not will be compromised in the ability to effectively conduct the functions, duties and responsibilities of a practitioner in the nursing profession.

10. Even though Respondent had a deep seated interest in child pornography, in March 2005 Respondent applied to adopt a special needs child from an adoption facility in Oakland, California.

An analysis of the hard drive of Respondent's computer detected numerous digital images of children who were "up for adoption" as well as children in wheelchairs engaged in playing soccer. The computer revealed Respondent's inquiries for camp nurse positions with the San Jose City Department of Parks and Recreation, which sent a response to inform Respondent that many openings were available for camp nurses.

11. And even though he had a predilection for child pornography, in late March 2005, Respondent filed an application in Sacramento, California with a foster family agency.

Matters in Rehabilitation or Mitigation

12. The absence from the proceedings in this matter of Respondent precludes finding of mitigation and rehabilitation on his behalf.

Other Matters

13. At the time that police executed a search warrant of his home in December 2005, Kaiser Permanente employed Respondent in Nursing Information Technology as a Program Manager in offices in Emeryville, Alameda County, California. He worked in that capacity from June 2002 until September 2006.

In the past Respondent's work had involved providing nursing services to children with grave physical illness or permanent disabilities.

Costs of Investigation and Prosecution

14. Complainant offered neither evidence nor an argument in support of an order to impose costs of investigation or prosecution on Respondent.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a registered nurse license is "clear and convincing evidence to a

reasonable certainty.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

“Clear and convincing evidence” means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. “Clear and convincing evidence” is a higher standard of proof than proof by a “preponderance of the evidence.” (*BAJI*³ No. 2.62, (8th ED.), 1994.) “Clear and convincing evidence” requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

Statutory Authority

2. Business and Professions Code section 490 prescribes that the “board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. . . .”

3. Business and Professions Code section 2761, subdivision (f), provides that the Board of Registered Nursing may take disciplinary action against Respondent’s registered nurse license for “conviction of . . . any offense substantially related to the qualifications, functions, and duties of a registered nurse. . . .”

4. Business and Professions Code section 2764 establishes, in pertinent part, that the suspension or lapsing of a license by operation of law or by an order of the Superior Court shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision that imposes discipline on the license.

Cause Exists to Impose License Discipline

5. Clear and convincing evidence established grounds to impose discipline against Respondent’s registered nurse license under Business and Professions Code sections 2761, subdivision (f), and 490, for unprofessional conduct in that Respondent has been convicted of an offense substantially related to the qualifications, functions, and duties of a registered nurse.

6. In that Respondent failed to appear at the hearing, the record for this matter received no evidence in mitigation or rehabilitation. Hence, no basis exists to consider Respondent’s rehabilitation following his recent criminal conviction.

³ *Book of Approved Jury Instructions*, Standard Jury Instructions, Civil

Complainant's Recovery of Costs of Prosecution


7. Through the Accusation against Respondent, Complainant requested that Respondent be ordered to pay the Board's its costs of investigation and prosecution. Business and Professions Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." But, at the hearing of this matter, Complainant offered neither evidence nor an argument in support of an order to impose costs of investigation or prosecution on Respondent. Therefore, no order for cost recovery is made.

ORDER

1. Registered Nurse License Number 560609 issued to Respondent Brian S. Pease is revoked.

2. Public Health Nurse License Number 61976 issued to Respondent Brian S. Pease is revoked

DATED: October 1, 2007



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-20

12 **BRIAN SPENCER PEASE**
60 Camino Alto, No. 1
13 Mill Valley, California 94941

A C C U S A T I O N

14 Registered Nurse License No. 560609
Public Health Nurse License No. 61976

15 Respondent.
16

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18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 **License History**

24 2. On or about October 26, 1999, the Board issued Registered Nurse License
25 Number 560609 to Brian Spencer Pease ("Respondent"). The registered nurse license will expire
26 on August 31, 2007, unless renewed.

27 3. On or about March 29, 2000, the Board issued Public Health Nurse
28 License Number 61976 to Brian Spencer Pease ("Respondent"). The registered nurse license

1 will expire on August 31, 2007, unless renewed.

2 STATUTORY PROVISIONS

3 4. Section 2750 of the Business and Professions Code ("Code") provides, in
4 pertinent part, that the Board may discipline any licensee, including a licensee holding a
5 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
6 2750) of the Nursing Practice Act.

7 5. Code section 2764 provides, in pertinent part, that the lapsing or
8 suspension of a license by operation of law or by order or decision of the board or a court of law
9 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
10 licensee or to render a decision imposing discipline on the license.

11 6. Code section 2761 states, in pertinent part:

12 The board may take disciplinary action against a certified or licensed nurse
13 or deny an application for a certificate or license for any of the following:

14 (f) Conviction of a felony or of any offense substantially related to the
15 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

16 COST RECOVERY

17 7. Code section 125.3 provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 CAUSE FOR DISCIPLINE

22 (Criminal Conviction)

23 8. Respondent is subject to disciplinary action under Code section 2761,
24 subdivision (f), in that Respondent has been convicted of the following crimes that are
25 substantially related to the qualifications, functions or duties of a licensed registered nurse:

26 a. On September 20, 2006, in the Superior Court, County of Marin,
27 California, in the matter entitled *People of the State of California vs. Brian Pease* (Case No.
28 CR146379A), Respondent was convicted on his plea of guilty to violating Penal Code section

1 311.11(a) (Possession or control of child pornography), a felony. Respondent was sentenced to 3
2 years probation, a minimum one-year sex offender program, a fine of \$350.00 and he was
3 ordered to register as a sex offender pursuant to Penal Code Section 290 et al. Respondent was
4 also restricted from having contact with minor children.

5 b. The circumstances of the crime are that Respondent was a the suspect in
6 at least 2 cases in San Francisco where he had loitered around male public restrooms.

7 c. Specifically, On or about November 19, 2004 Respondent was seen
8 loitering around the male restroom at the San Francisco Exploratorium, a science and discovery
9 museum for children. The young male victim was on a field trip with his school and stopped to
10 use the restroom. While sitting in the restroom stall, the young boy felt as is someone was
11 watching him. He looked up and noticed a hand over the partition of the bathroom stall holding a
12 camera phone. He realized someone was taking his picture. He yelled at the person to stop.
13 Respondent fled the building and was only later identified as the perpetrator of the crime.

14 d. Following, Respondent's identification as the perpetrator, on or about
15 December 7, 2005 San Francisco Police Department conducted a search of Respondent's home
16 residence. Officers located and seized X-rated pornographic videos such as, Barely Legal-Tiny
17 Teens, youngest First Time, Young Sluts, Inc., Sleep Over Sluts, X-tra Hardcore-tiny girls,
18 Finally 18 and Legal. All pornographic materials.

19 e. Officers discovered a box containing handcuffs, two cans of Playdoh and
20 a Kodak fun saver 35 mm camera. A book displaying numerous photos of children naked or in
21 their underwear, ages noted 3, 4, 5 and 6-years old, was seized. Offices found an e-receipt from
22 scatmen.com for three videos, one of which was respondent on vacation with a disabled boy and
23 his family, in a hotel room, with a bath tub full of beer. Inside Respondent's vehicle officers
24 seized "KY" personal lubricant-warming liquid inside of driver's door.

25 f. A review of Respondent's confiscated cell phone and computer was
26 conducted. The analysis produced a sub-folder named "Brian" with 143 Child Pornographic
27 Images. An image consistent with the victim of the incident at the San Francisco Exploratorium
28 was found.

1 **OTHER MATTERS**

2 9. At the time of the search and seizure conducted by San Francisco Police,
3 Respondent's employer, Kaiser conducted a review of Respondent's workplace computer. the
4 review revealed various emails and chat sites such as www.tolietstool.com a domain that
5 includes coprophilia posts related to minors, including conversation, sexual in nature, with
6 individuals reporting to be minors. Analysis also revealed numerous photos of children up for
7 adoption and children in wheelchairs playing soccer; and inquiries regarding camp nurse
8 positions for the Department of Parks and recreation in San Jose.

9 10. Respondent's history indicated that on March 30, 2005 he applied to adopt
10 a special child in Oakland, California.

11 11. On March 30, 2005, Respondent placed a separate application with a
12 foster family agency in Sacramento, California.

13 **PRAYER**

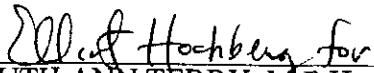
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

16 1. Revoking or suspending Registered Nurse License Number 560609, issued
17 to Brian Spencer Pease.

18 2. Ordering Brian Pease to pay the Board of Registered Nursing the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
20 125.3; and,

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 7/31/07

23 
24 RUTH ANN TERRY, M.P.H., R.N.
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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